SHAHRUDI ABIDIN v. DATUK WIRA ABU SEMAN YUSOP TIMBALAN MENTERI DALAM NEGERI KEMENTERIAN DALAM NEGERI MALAYSIA & ORS

COURT OF APPEAL, PUTRAJAYA
BADARIAH SAHAMID JCA
HARMINDAR SINGH DHALIWAL JCA
NOR BEE ARIFFIN JCA
[CIVIL APPEAL NO: W-01(NCVC)(W)-140-02-2018]
19 JUNE 2020

CRIMINAL PROCEDURE: *Habeas corpus – Preventive detention – Detainee obtained habeas corpus order against restriction order – Claim for damages for unlawful imprisonment – Whether there was wilful restraint – Whether habeas corpus order relevant evidence – Whether restriction order justified – Whether procedural non-compliance established – Evidence Act 1950, s. 43 – Emergency (Public Order and Prevention of Crime) Ordinance 5, 1969, ss. 4A(1), 7C & 7D*

LIMITATION: *Action – Damages – Claim for damages for unlawful imprisonment – Tort of false imprisonment – Whether continuing tort – Whether limitation period runs from date injury or damage ceased – Whether action time-barred – Public Authorities Protection Act 1948, s. 2(a)*

The appellant was detained on 20 April 2009 for a period of 60 days under s. 4A(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 5, 1969 ('EO 1969') on the grounds of being involved in gangster activities. The first respondent issued a restriction order against the appellant for a period of two years. The appellant successfully obtained an order against the restriction order on 6 January 2011 and was ordered to be released with immediate effect ('*habeas corpus* order'). The appellant subsequently filed the instant suit under appeal and claimed for general damages for unlawful imprisonment for a period of 626 days from 20 April 2009 until 6 January 2011. The appellant also claimed for aggravated and exemplary damages and costs. The issues raised for the consideration before the Judicial Commissioner ('JC') were: (i) whether the *habeas corpus* order was relevant and admissible to attach liability on the part of the respondents; (ii) whether ss. 7C and 7D of the EO 1969 had ousted the jurisdiction of the courts in awarding general damages for the tort of wrongful imprisonment; and (iii) whether the appellant's claim was barred by limitation under s. 2(a) of the Public Authorities Protection Act 1948 ('PAPA'). The JC dismissed the appellant's claim holding that (i) the *habeas corpus* order was not admissible nor relevant to establish admissibility; (ii) no evidence was adduced to suggest that the respondents had acted in excess of their jurisdiction and thus the ouster clause in ss. 7C and 7D of the EO 1969 applied as the appellant had already procured the remedy of being released and no other remedies were therefore available to him; and (iii) the action was barred by limitation. Hence, the appeal by the applicant on the same issues.

Held (allowing appeal; setting aside order of High Court)
Per Harmindar Singh Dhaliwal JCA delivering the judgment of the court:

(1) False imprisonment involves the wilful restraint of another against their will without legal justification. In this case, there was no question of wilful restraint against the appellant's will. The case was also not caught by s. 43 of the Evidence Act 1950 as this suit, in a sense, was a continuation of the *habeas corpus* proceedings resulting in the 6 January 2011 Order, as it involved the same parties with almost the same issues, but seeking a different remedy. (paras 13 & 19)

(2) As the High Court ruled that the restriction order was made without following the law and was therefore invalid, the *habeas corpus* order was not just relevant and admissible, but also provided compelling evidence as to the issue of whether the restraint was made with legal justification. The respondents, by not appealing against the order made in the *habeas corpus* proceedings, must be taken to have accepted the findings of the court as correct and valid. In the circumstances, it was not open to the respondents to suggest that the *habeas corpus* proceedings were irrelevant and could not be accepted as evidence. However, the *habeas corpus* was not conclusive, but only evidence which must be considered by the court. It was not *res judicata* as the *habeas corpus* proceedings provided a different remedy compared to the instant proceedings. A person who claims to have been unlawfully imprisoned could either file *habeas corpus* proceedings which, if successful, would result in his immediate release or file a civil action for damages. It will not follow that success on the *habeas corpus* would form the basis of the civil action. (paras 20-22)

(3) Section 43 of the Evidence Act 1950 is not envisaged for the type of cases where a criminal conviction was being used for a subsequent civil proceeding. The upshot was that the *habeas corpus* proceedings and the *habeas corpus* order were not just relevant and admissible in the instant case, but must also constitute, not conclusive evidence, but weighty evidence against the respondent such that failure to rebut must result in the success of the claim. Once the plaintiff established the imprisonment, the burden of proving justification lies with the defendant. Apart from the respondents saying that they were justified in applying for the restriction order based on the criminal activities of the appellant, there appeared to be no evidence to suggest that the said order followed the provisions of the law. Hence, the JC was plainly wrong in her finding as the respondents had failed to provide the legal justification for the restriction order. (paras 23, 25, 27 & 29)

(4) Section 7C of the EO 1969 indicates that procedural non-compliance is a ground of challenge within jurisdiction of the court. The ouster clause can only operate if any decision is made in accordance with the law. In this case, the respondents had not acted in compliance with the procedural requirement of the law. As such, the JC was plainly wrong in holding that the ouster clause applied. (paras 31 & 32)

(5) The instant action was time-barred by virtue of s. 2(a) of the PAPA. The tort of false imprisonment is a continuing tort in the sense that the injury or damage was continuing. Thus, the limitation period runs, not from the date of detention, but from the date the injury or damage ceased, which was, in the present case, when the appellant was released on 6 January 2011. Since the writ was filed on 3 January 2014, the action was not time-barred. The challenge by the appellant on this ground must therefore succeed. (paras 33 & 34)

(6) The appellant had therefore successfully established liability. Although the award of a global sum for damages was warranted, the sum of RM25,000 was a paltry sum not commensurate with the period of the restriction of the appellant's liberty. A sum of RM100,000 would be a fair and reasonable sum as compensation. (paras 35-37)

Case(s) referred to:

A v. Bottrill [2003] 1 AC 449 ***(refd)***

Datuk S Nallakaruppan & Ors v. Datuk Seri Anwar Ibrahim & Other Appeals [2015] 6 CLJ 425 CA ***(refd)***

DP Vijandran v. Karpal Singh & Ors [2000] 6 CLJ 433 HC ***(refd)***

Hicks v. Faulkner (1878) 8 QBD 167 ***(refd)***

Hollington v. F. Hewthorn & Co Ltd [1943] 2 All ER 35 ***(refd)***

Kannan & Anor v. Menteri Buruh Dan Tenaga Rakyat & Ors [1973] 1 LNS 61 HC ***(refd)***

Khairy Jamaluddin v. Dato' Seri Anwar Ibrahim [2015] 3 CLJ 1062 CA ***(refd)***

Liversidge v. Anderson [1942] AC 206 ***(refd)***

Mak Koon Yong & Anor v. Municipal Councillors, Malacca [1967] 1 LNS 98 HC ***(refd)***

Ong Tua Chor v. Lee Beng Tong [1975] 1 LNS 116 HC ***(refd)***

Pathmanabhan Nalliannen v. PP & Other Appeals [2016] 1 CLJ 377 CA ***(refd)***

Penguasa Tempat Tahanan Perlindungan Kamunting, Taiping & Ors v. Badrul Zaman PS Md Zakariah [2014] 7 CLJ 533 CA ***(refd)***

Regina v. Governor of Brockhill Prison [1999] QB 1034 ***(refd)***

Rogers v. Hoyle [2013] EWCA Civ 257 ***(refd)***

Rookes v. Barnard [1964] AC 1129 ***(refd)***

She Eng Gek v. DA De Silva [1956] 1 LNS 113 HC ***(refd)***

Stupple v. Royal Insurance Co Ltd [1971] 1 QB 50 ***(refd)***

Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors v. Ong San Huei [2018] 3 CLJ 509 CA ***(refd)***

YK Fung Securities Sdn Bhd v. James Capel (Far East) Ltd [1997] 4 CLJ 300 CA ***(refd)***

Legislation referred to:
Emergency (Public Order and Prevention of Crime) Ordinance 5, 1969, ss. 4A(1), 7C, 7D
Evidence Act 1950, s. 43
Federal Constitution, art. 5(1)
Public Authorities Protection Act 1948, s. 2(a)
Civil Evidence Act 1968 [UK], s. 11
Evidence Act 1872 [Ind], s. 43
Police and Criminal Evidence Act 1984 [UK], s. 74

For the appellant - Mohamad Zaidan Daud; M/s Haffiz Zuhair Adawiah & Co
For the respondents - Andi Razalijaya A Dadi, Siti Rafidah Zainuddin; SFCs & lstisyhad Ismail; FC

[Editor's note: Appeal from High Court, Kuala Lumpur; Civil Suit No: 21NCVC-4-01-2014 (overruled).]

Reported by S Barathi

JUDGMENT

Harmindar Singh Dhaliwal JCA:

[1] This is an appeal from the decision of the Kuala Lumpur High Court dated 17 January 2018. The High Court had dismissed the plaintiff's claim for damages for false imprisonment with costs of RM8,000. Aggrieved with this decision the plaintiff, now the appellant, has filed this appeal.

[2] The appeal was heard on 6 December 2019. After having read the written submissions as well as hearing oral arguments on the issues raised, we indicated to the parties that we would deliver our decision on a date to be informed. Having deliberated on the issues raised in this appeal, this is now our unanimous decision and will form the judgment of the court.

The Factual Background

[3] The relevant facts leading to the filing of the claim are set out by the learned Judicial Commissioner ("JC") and can be summarised as follows.

[4] The appellant was detained on 20 April 2009 for a period of 60 days under s. 4A(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 5, 1969 (PU(A) 187/69) ("EO 1969") on the grounds of being involved in gangster activities. On 18 June 2009, the first respondent issued a restriction order against the appellant for a period of two years. He was restricted to the area of Mukim Kerteh, Daerah Kemaman, Terengganu.

[5] The appellant then filed an originating summons dated 30 November 2010 to challenge his restriction order. On 6 January 2011, the High Court at Kuala Terengganu granted the declaration that the restriction order dated 18 June 2009 "adalah tidak mengikut nas undang-undang, tidak teratur dan seterusnya dibatalkan". The appellant was ordered to be released with immediate effect.

[6] On 3 January 2014, the appellant filed the instant suit under appeal and claimed for general damages for unlawful imprisonment for a period of 626 days from 20 April 2009 until 6 January 2011. He also claimed for aggravated and exemplary damages and costs.

Findings Of The High Court

[7] Arising from the contentions of the parties, several issues came up for deliberation before the High Court. The first issue was whether the Kuala Terengganu High Court order dated 6 January 2011 ("the *habeas corpus* order") was relevant and admissible to attach liability on the part of the defendants who are the respondents here. In other words, was the *habeas corpus* order of probative value in order to establish liability?

[8] On this issue, the learned JC was quite emphatic that the *habeas corpus* order was not admissible nor relevant to establish liability. This is how the learned JC addressed the issue (at paras. 31, 37 and 55 of the judgment):

> [31] Berdasarkan keterangan yang diberikan oleh saksi-saksi defendan-defendan, Mahkamah mendapati dakwaan Plaintif mengenai isu tangkapan salah adalah tidak bermerit dan tidak berasas. lni adalah kerana dari keterangan saksi-saksi defendan-defendan jelas menunjukkan bahawa Defendan-Defendan mempunyai sebab yang mewajarkan penahanan Plaintif di bawah Ordinan Darurat.
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> ...
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> [37] Selain itu, Plaintif sendiri juga gagal untuk membawa apa-apa keterangan untuk menunjukkan bahawa Perintah Sekatan yang dikeluarkan terhadapnya oleh D1 adalah dibuat tanpa bidangkuasa atau diluar bidangkuasa D1, maka dengan itu Mahkamah berpuashati bahawa Perintah Sekatan yang dikeluarkan oleh D1 terhadap Plaintif adalah sah dan dikeluarkan oleh D1 menurut undang-undang berdasarkan kuasa yang diberikan kepada D1 sebagai Timbalan Menteri Dalam Negeri.
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> ...
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> [55] Oleh itu, Mahkamah berpendapat bahawa keputusan Mahkamah Tinggi Kuala Terengganu adalah tidak terpakai untuk menjadi satu-satunya bahan bukti bagi maksud pembuktian untuk menyokong tuntutan gantirugi oleh Plaintif atas penahanan salah di sini kerana Mahkamah ini, yang menjalankan kuasa di bawah bidangkuasa sivil perlu membuat penemuan fakta sendiri bagi menentukan samada Plaintif berjaya atau tidak membuktikan tuntutannya, berasaskan Kausa Tindakan Penahanan Salah yang dibawa oleh Plaintif di dalam tuntutan di sini, yang merupakan suatu tuntutan sivil terhadap defendan-defendan sebelum isu gantirugi dapat diputuskan oleh Mahkamah.

[9] The next issue considered and decided by the learned JC was whether ss. 7C and 7D of the EO 1969 had ousted the jurisdiction of the courts in awarding general damages for the tort of wrongful imprisonment. In this context, the learned JC held that no evidence was adduced to suggest that the

A defendants there had acted in excess of their jurisdiction. As such the ouster clause in ss. 7C and 7D applied as the appellant had already procured the remedy of being released and no other remedies were therefore available to him.

B **[10]** The final issue addressed by the learned JC was on the question of whether the appellant's claim was barred by limitation under s. 2(a) of the Public Authorities Protection Act 1948. The learned JC took the view that the cause of action arose when the appellant was first detained on 20 April 2009. Since the instant action was only filed on 3 January 2014, it had exceeded the statutory time limit of 36 months by about two years.

C **[11]** For all the above reasons, the learned JC held the appellant was not entitled to the claim. In assessing damages, the learned JC considered that since the claim was against the restriction order, a global award of RM25,000 would be fair and reasonable.

D **The Instant Appeal**

[12] Before us, the same principal issues were argued by the parties. The appellant sought to establish that the learned JC was plainly wrong in arriving at the decisions on all the issues as set out in the foregoing. The respondent in turn argued that the learned JC had come to the correct
E conclusion on each of the issues.

[13] On the first question of whether liability had been established against the respondents here, it is first necessary to consider what the tort of false imprisonment entails. Put simply, false imprisonment involves the wilful restraint of another against their will without legal justification. There is no
F question here that there was wilful restraint against the appellant's will. The only issue is whether there was legal justification for the restraint.

[14] In this context, the learned JC accepted the arguments of the respondents that the *habeas corpus* order was neither applicable nor relevant
G as evidence to establish the claim of false imprisonment by virtue of s. 43 of the Evidence Act 1950. Section 43, shorn of the illustrations, reads as follows:

> 43 Judgments, etc, other than those mentioned in sections 40 to 42 when relevant
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> H Judgments, orders or decrees other than those mentioned in sections 40, 41 and 42 are irrelevant unless the existence of such judgment, order
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> decree is a fact in issue or is relevant under some other provision of this Act.

I **[15]** Now, s. 43 has been part of the original Evidence Act 1950. It is in *pari materia* with s. 43 of the Indian Evidence Act 1872 and accepted as an embodiment of the common law rule set out in the English Court of Appeal

case of *Hollington v. F Hewthorn & Co Ltd* [1943] 2 All ER 35 ("*Hollington*") as observed by this court in *Datuk S Nallakaruppan & Ors v. Datuk Seri Anwar Ibrahim & Other Appeals* [2015] 6 CLJ 425; [2015] 4 MLJ 34 ("*Nallakaruppan*"). The case of *Hollington*, in essence, held that a criminal conviction was inadmissible in subsequent civil proceedings as evidence that the person convicted had committed the offence in question.

[16] The rationale underlying s. 43 was also explained in *Nallakaruppan* (*supra*), as follows (at p. 435 (CLJ); p. 45 (MLJ)):

> [22] The rationale underlying s. 43 can be gleaned from the statement in *Hollington*'s case which is as follows: 'The Court which has to try the claim for damages knew nothing of the evidence that was before the criminal court. It cannot know what arguments were addressed to the court or what influence (*sic*) the court in arriving at its decision. Moreover, the issue in the criminal proceeding in not identical with that raised in claim for damages. ...

[17] Before and after *Nallakaruppan* was decided, *Hollington*'s case had been cited with approval by our courts in many cases (with some exceptions), for example, in *She Eng Gek v. D A De Silva* [1956] 1 LNS 113; [1957] 1 MLJ 55; *Ong Tua Chor v. Lee Beng Tong* [1975] 1 LNS 116; [1976] 1 MLJ 187; *YK Fung Securities Sdn Bhd v. James Capel (Far East) Ltd* [1997] 4 CLJ 300; [1997] 2 MLJ 621 (CA); *DP Vijandran v. Karpal Singh & Ors* [2000] 6 CLJ 433; [2000] 3 MLJ 22; *Khairy Jamaluddin v. Dato' Seri Anwar Ibrahim* [2015] 3 CLJ 1062; and *Pathmanabhan Nalliannen v. PP & Other Appeals* [2016] 1 CLJ 377.

[18] The common feature or rationale in these cases is that the court must exercise its own independent judgment based on the material before it and not be bound by the decision or judgment in a previous case. This makes sense as the parties in the subsequent case may be different and the issues to be decided may not be identical. It would also be patently unfair for a party which was not present in the earlier proceeding to be bound by the decision in a subsequent proceeding.

[19] Be that as it may, we do not consider the instant case to be caught by s. 43 of the Evidence Act 1950 for the reasons that follow. The *habeas corpus* proceedings resulting in the 6 January 2011 order involved much the same parties. It involved proceedings essentially between the appellant and the government. There is no other third party who was not involved earlier in the *habeas corpus* proceedings. The issues involved were also the same, that is, whether the restraint ordered was legally justified. In a sense, the instant suit is a continuation of the *habeas corpus* proceedings involving the same parties with almost the same issues but now seeking a different remedy. Indeed, much judicial time and expense would be saved by not having to re-litigate the same issues. Considered in this fashion, we think that the decisions in *Hollington* and the cases which followed had altogether different circumstances.

[20] Since the High Court which heard the *habeas corpus* proceedings order ruled that the restriction order was made without following the law and was therefore invalid, it only stands to reason that that *habeas corpus* order is not just relevant and admissible but indeed provides compelling evidence as to the issue of whether the restraint was made with legal justification.

[21] Any other conclusion, we say, would be akin to permitting a collateral attack on the earlier final decision of a court of competent jurisdiction. The implication, if we agree with the learned JC, is that the *habeas corpus* order could have been incorrectly decided. However, and this is highly significant, the respondents here did not appeal against the order made in the *habeas corpus* proceedings. They must then be taken to have accepted the findings of the court as correct and valid (see *Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors v. Ong San Huei* [2018] 3 CLJ 509; and *Penguasa Tempat Tahanan Perlindungan Kamunting, Taiping & Ors v. Badrul Zaman PS Md Zakariah* [2014] 7 CLJ 533). In the circumstances, it is not open to the respondents here to suggest that the *habeas corpus* proceedings are irrelevant and cannot be accepted as evidence in the instant case.

[22] We must, however, hasten to add that the *habeas corpus* order is not conclusive in the instant proceedings but is only evidence which must be considered by the court. Put simply, it is not *res judicata* as the *habeas corpus* proceedings provided a different remedy compared to the instant proceedings. It is elementary that a person who claims to have been unlawfully imprisoned can either file *habeas corpus* proceedings which, if successful, will result in his immediate release or he can file a civil action for damages. It will not follow that success on the *habeas corpus* will form the basis of the civil action (see RJ Sharpe, *The Law of Habeas Corpus*, Clarendon Press Oxford (1976) at p. 59).

[23] It is our judgment, however, that s. 43 of the Evidence Act 1950 was not envisaged for the kind of factual matrix as in the instant case. It was meant for the type of cases where a criminal conviction was being used for a subsequent civil proceeding as was the case in both *Hollington* and *Nallakaruppan*. The upshot is that the *habeas corpus* proceedings and the *habeas corpus* order are not just relevant and admissible in the instant case but must also constitute, not conclusive evidence, but weighty evidence against the respondent such that failure to rebut must result in the success of the claim (see *Stupple v. Royal Insurance Co Ltd* [1971] 1 QB 50).

[24] Having set out the aforementioned position, it would also not be out of place to observe that the position in the United Kingdom has changed. The *Hollington* case has been reversed by statute in the form of s. 11 of the Civil Evidence Act 1968 in respect of the use of criminal convictions in subsequent civil proceedings (see *Rogers v. Hoyle* [2013] EWCA Civ 257). The UK Parliament abolished the application of the same rule to subsequent criminal proceedings as well *via* s. 74 of the Police and Criminal Evidence Act 1984.

[25] Coming now to the instant claim, the law on false imprisonment is settled in that once a plaintiff establishes the imprisonment, the burden of proving justification lies with defendant (see *Hicks v. Faulkner* (1878) 8 QBD 167 at p. 170). As stated by Lord Atkin in *Liversidge v. Anderson* [1942] AC 206 at p. 245 (dissenting): "one of the pillars of liberty is that in English law, every imprisonment is *prima facie* unlawful and that it is for the person directing the imprisonment to justify his act". (as observed in Judith Farbey, RJ Sharpe and Simon Atrill, *The Law of Habeas Corpus* (3rd edn) Oxford (2011) at p. 88).

[26] In the instant case, however, the learned judge appeared to have reversed the burden as reflected in para. 37 of the judgment:

> [37] Selain itu, Plaintif sendiri juga gagal untuk membawa apa-apa keterangan untuk menunjukkan bahawa Perintah Sekatan yang dikeluarkan terhadapnya oleh D1 adalah dibuat tanpa bidangkuasa atau di luar bidangkuasa D1, maka dengan itu Mahkamah berpuashati bahawa Perintah Sekatan yang dikeluarkan oleh D1 terhadap Plaintif adalah sah dan dikeluarkan oleh D1 menurut undang-undang berdasarkan kuasa yang diberikan kepada D1 sebagai Timbalan Menteri Dalam Negeri.

[27] Apart from the respondents saying that they were justified in applying for the restriction order based on the criminal activities of the appellant, there appeared to be no evidence to suggest that the said order followed the provisions of the law. It is one thing to say that "we have good reason to act" against someone but it is quite another to say we have followed all the rules in order to detain him".

[28] As mentioned earlier, it was for the respondents to establish that they had acted in accordance with the law. This is in fact a right entrenched in art. 5(1) of the Federal Constitution which provides that "no person shall be deprived of his life or personal liberty save in accordance with the law."

[29] In all the circumstances, we are constrained to hold that the learned judge was plainly wrong in her finding as the respondents have failed to provide the legal justification for the restriction order.

[30] The second issue concerned the ouster clause in the form of ss. 7C and 7D of the EO 1969. Section 7C is the pertinent section and it reads as follows:

> 7C Judicial review of act or decision of Yang di-Pertuan Agong and Minister
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> (1) There shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect of, any act done or decision made by the Yang di-Pertuan Agong or the Minister in the exercise of their discretionary power in accordance with this Ordinance, save in regard to any question on compliance with any procedural requirement in this Ordinance governing such act or decision.

A (2) The exception in regard to any question on compliance with any procedural requirement in subsection (1) shall not apply where the grounds are as described in section 4C.

[31] A plain reading of s. 7C indicates that procedural non-compliance is a ground of challenge within the jurisdiction of the court. The ouster clause B can only operate if any decision is made in accordance with the law. The following passage from the case of *Kannan & Anor v. Menteri Buruh Dan Tenaga Rakyat & Ors* [1973] 1 LNS 61; [1974] 1 MLJ 90 is instructive (at p. 92):

C From all these authorities, I am inclined to think that the better view of the law is that a plea that the Court cannot interfere with a decision by reason of an ouster clause will only be accepted if the decision was reached according to the law. If the decision is not according to law, the Court would invariably interfere with it. To my mind, a decision not according to law is no decision at all. In the present case, I would say that the decision of the Minister can be questioned if it can be shown that it D was reached as a result of no proper enquiry, or of failure to comply with the prescribed procedure for an enquiry, or if it can be shown that the decision was a nullity for lack of jurisdiction or for failure to comply with the law.

[32] In the instant case, it can hardly be disputed that the challenge was E made on the ground of procedural non-compliance. In other words, it was asserted that the respondents had not acted in compliance with the procedural requirement of the law. As such, we agree with the appellant that the learned JC was plainly wrong in holding that the ouster clause applied.

[33] The final issue concerns the finding of the learned JC that the instant F action is time-barred by virtue of s. 2(a) of the Public Authorities Protection Act 1948 ("PAPA 1948"). The learned JC adopted the view suggested by the respondents that the cause of action arose when the appellant was arrested on 20 April 2009 and the action was therefore instituted beyond the 36 months stipulated in PAPA 1948.

G **[34]** We must say at once that this view, with respect, is erroneous for the simple reason that the tort of false imprisonment is a continuing tort in the sense that the injury or damage is continuing (see *Mak Koon Yong & Anor v. Municipal Councillors, Malacca* [1967] 1 LNS 98; [1967] 1 MLJ 256). So, the limitation period runs not from the date of detention but from the date H the injury or damage ceased, which, in the present case, must be when the appellant was released on 6 January 2011. Since the instant writ was filed on 3 January 2014, the action was not time-barred. The challenge by the appellant on this ground must therefore succeed.

I **[35]** In the circumstances, we disagree with the finding of the learned JC. For the reasons we have set out in the foregoing, we find that liability had been established by the appellant.

[36] On the question of quantum, we agree with the learned JC that the claim was only with regard to the restriction order. The cases cited by the appellant are not directly relevant as they refer to persons who were either kept in police custody or locked up in jail. We also agree with the learned JC that there were no grounds to grant aggravated or exemplary damages. There was no evidence of oppressive or outrageous conduct on the part of the detaining authorities (see *Rookes v. Barnard* [1964] AC 1129; and *A v. Bottrill* [2003] 1 AC 449).

[37] Although we agree that the award of a global sum for damages was warranted in this case (see *Regina v. Governor of Brockhill Prison* [1999] QB 1034), we considered the sum assessed of RM25,000 to be a paltry sum not commensurate with the period of the restriction of the appellant's liberty. In our assessment, a sum of RM100,000 would be a fair and reasonable sum as compensation.

Conclusion

[38] For all the aforesaid reasons, we allow the appeal and set aside the order of the High Court. Accordingly, we order judgment to be entered in favour of the appellant for the sum of RM100,000 as damages together with interest as claimed and costs here and below in the sum of RM20,000.